

2009 DRAFTING REQUEST

Bill

Received: **08/13/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters: **rchampag**

Subject: **State Govt - miscellaneous
State Govt - procurement**

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **russ.whitesel@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Omnibus state contracting reform package

Instructions:

See attached--redraft -3202 as a /pdraft

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State Crime
/P1	chanaman 08/13/2009 chanaman 09/15/2009	bkraft 09/15/2009	mduchek 08/14/2009	_____	mbarman 08/14/2009		State
/P2	chanaman 09/16/2009	bkraft 09/17/2009	phenry 09/16/2009	_____	lparisi 09/16/2009		State

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FE Sent For: "13" @ intro. 1/7/10

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10/6

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Handwritten signatures and dates:
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 [Signature] 9/10/09

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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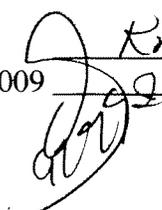
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/?	chanaman	BJR 8/13	BJR 8/13	27 8/14			

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2009 DRAFTING REQUEST

CHANGED
TO
3274
8/13/09

Bill

Received: 07/28/2009

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle**

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Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **State Govt - miscellaneous
State Govt - procurement
Transportation - highways**

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **rick.champagne@legis.wisconsin.gov**

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1/?	rchampag 07/29/2009 chanaman 08/12/2009 agary	/PI bjk 8/13	md 8/13	J Km 8/14			

FE Sent For:

Champagne, Rick

From: Wilson, Danielle
Sent: Thursday, July 23, 2009 2:30 PM
To: Champagne, Rick
Subject: RE: Meeting availability?

See you then!

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Champagne, Rick
Sent: Thursday, July 23, 2009 2:27 PM
To: Wilson, Danielle
Subject: RE: Meeting availability?

10:00 it is! And thanks again.

From: Wilson, Danielle
Sent: Thursday, July 23, 2009 2:26 PM
To: Champagne, Rick
Subject: RE: Meeting availability?

Sure, that is fine. No problem. Do you want to say 10 a.m. Monday? (I might not be fully functional by 9 a.m. on a Monday. ☺)

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Champagne, Rick
Sent: Thursday, July 23, 2009 2:25 PM
To: Wilson, Danielle
Subject: RE: Meeting availability?

Danielle:

Is it possible to reschedule our Friday meeting for Monday morning at any time of your choosing? If you've

07/27/2009

planned around my showing up on Friday, though, I can certainly come in for the meeting. Sorry for the short notice.

Rick

From: Wilson, Danielle
Sent: Wednesday, July 22, 2009 3:05 PM
To: Champagne, Rick
Subject: RE: Meeting availability?

9 a.m. would work great. Thank you!

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Champagne, Rick
Sent: Wednesday, July 22, 2009 3:05 PM
To: Wilson, Danielle
Subject: RE: Meeting availability?

Hi Danielle:

Friday morning would be good. How about 9:00 or 10:00?

Rick

From: Wilson, Danielle
Sent: Wednesday, July 22, 2009 3:01 PM
To: Champagne, Rick
Subject: Meeting availability?

Hi Rick,

I was wondering if you have any time Friday to discuss some drafting instructions? The proposal will incorporate several various contracting provisions, including those in LRB-3062/1, and I feel that it may be easier to just go over them in person.

Thanks,

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882

07/27/2009

Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

Contracting Reform Package

Required Cost Savings

- Move to require all state executive branch agencies to review their service contract practices for private personnel and report their findings on how they will achieve savings of 1% for the 2009-11 biennium to the Joint Committee on Finance by January 1, 2010. Specify that if an executive branch agency cannot achieve 1% in savings, the agency must prepare a report to the Committee detailing why the agency cannot achieve this goal. Allow the Joint Committee on Finance to reduce executive branch agency appropriations by 1% of the amounts spent for service-related contracts for personnel based on the agency reports. **- Allow line item veto?**

Moratorium during Furloughs/Layoffs

- Move to specify that, if a hiring freeze or mandatory furloughs has been instituted, then executive branch agencies could not hire private contractors and consultants within the remaining fiscal year, except when funding for private contractors or consultants is authorized under the federal *American Recovery and Reinvestment Act* [federal moneys received by the state beginning on the effective date of this paragraph and ending on June 30, 2011, pursuant to federal legislation enacted during the 111th Congress for the purpose of reviving the economy of the United States] and the DOA Secretary determines that federal deadlines could not be achieved without the use of private contractors or consultants or a cost benefit analysis is completed that shows that private contractors or consultants would be both more cost effective and more efficient. Allow an executive branch agency to directly submit a request under a 14-day passive review process, which would allow the agency to hire a private contractor or consultant if the agency submits information to the Joint Committee on Finance stating why they cannot comply with this provision and the Committee approves the request.

Disclosure Requirements

- Require each agency as part of its biennial budget request, and the Department of Administration as part of the Governor's biennial budget bill, to identify the following: (a) the number of contracted positions funded using base resources, by agency and appropriation; (b) all base level funding provided to support contracted positions; (c) the amount of funding requested for contracted positions, by agency and appropriation; and (d) the estimated number of state-funded positions that would be required to perform the services under any new contract funding request.

Cost-Benefit Analyses

- Change s.16.705 (1) The department or its agents may contract for services which can be performed more economically ~~or~~ and efficiently by such contract.
- Require same line items (such as overhead) in CBAs.

06 AB 105, Amendment 5

see attached

RAC

RAC

RAC

CMH

Median salary fringe benefit cost

- ✓ When estimating wages in CBA, require the agency to consider the average pay of current employees who provide those services. - **Best way to draft?**
- If the final costs in a proposed contract are more than 10% above the contract estimate in the cost benefit analysis, the agency shall conduct a second cost benefit analysis to ensure a decent comparison between the cost of contracted and state employees.
 - Prohibit bidders from seeing CBA prior to reviews of bids.
- ✓ Require LAB to conduct rolling audits of CBAs and subsequent contracts
- ✓ Add language to exempt the following specific categories:
 - ✓ Services that must be outsourced by requirement of state or federal law (Ex: Currently CBA would be created when contracting for bank services, yet by law the state cannot be a bank.)
 - ✓ Services that are incidental to the purchase of a commodity (Currently must conduct a CBA for commodities that include substantial installation. Since it is likely we would want the vendor, not a state employee to install a new product in order to keep the risk of installation with the vendor, yet a CBA is required.)
 - ✓ Services that must be provided by the original equipment manufacturer (OEM) or software publisher. (Services frequently require certification and must be approved by the OEM due to product warranty or licensing requirement. Legally only Microsoft or Adobe can provide upgrades and maintenance for their software. The state would void the state's license with these vendors if the state attempted to provide these services. Despite this, under current law the state must conduct a CBA. High end research equipment warranties frequently require the OEM to repair and service their equipment. This cannot be performed by state employees without voiding the warranty, yet a CBA is required.)

Service Contracts

- Must include standard clawback provisions developed by the Department of Administration's Division of Legal Services through administrative rules process.
- Must include standard performance measures developed by the Department of Administration's Division of Legal Services through administrative rules process.
- Prohibit automatic pay increases above the amounts specified in an original bid.
- Prohibit automatic contract extensions?
- If a contractor's expenses overrun its bid by 10% or more, require the agency to go back to Joint Finance Committee to request additional expenditure authority.
 - Include an emergency clause and/or language getting after "good faith estimate." - **How to draft?**

May not include severance packages

DOT-Specific Provisions

- Require the Department of Transportation to submit a report to the Joint Committee on Finance within six months after enactment that contains recommendations on actions that the Department and local governments could take to improve the efficiency, cost-effectiveness, and timeliness of local road construction projects, and any proposed legislative changes that the Legislature could consider that may help meet those goals.

CMH
(Division created in budget act under 16.004 (15))

ARG

• Require DOT, by July 1, 2014, and continuously thereafter, to maintain completed designs for highway projects with a total estimated construction cost equal to one year of funding in each of the respective highway improvement programs.

- Align general penalties against contractors with federal guidelines. (If a contractor knowingly skimps on concrete/materials for a federal-funded project, it's a \$10,000 fine and a year in prison).
- Require state employees to conduct tests of concrete thickness

LTE Positions

- Specify terms of Limited Term Employment positions to determine at what point they automatically turn into Full Time Employment positions.

Hold off

Champagne, Rick

From: Gary, Aaron
Sent: Tuesday, September 01, 2009 8:13 AM
To: Champagne, Rick; Hanaman, Cathlene
Subject: FW: LRB-3274/P1

I think the changes in the second paragraph are one or both of yours, right?

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Wilson, Danielle
Sent: Monday, August 31, 2009 11:51 AM
To: Gary, Aaron
Subject: LRB-3274/P1

Hi Aaron,

Thanks for the information last week on the DOT contracting/penalties. The senator is reviewing these as well as a few other provisions that may need tweaking in the draft so I will likely send you some instructions on those later this week so you can begin "tackling the beast." ☺

In the meantime though, I thought I would quick send you two other changes that she would like made. First, she would like to remove the language that states that the Department of Commerce may not engage any person who is not a department employee to perform electrical services for the department unless the department finds, based upon a cost-benefit analysis, that those services can be performed more cost-effectively and efficiently by that person than by a department employee. Secondly, on page 4, line 4 she would like to replace "perform an audit" with "the state auditor shall undertake periodic audits." This language is referenced from 13.94(8)(b). Her intent is to give the LAB enough flexibility to conduct the audits as often as possible without requiring audits on every CBA.

Thanks for all of your help. I hope you had a good weekend!

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

Gary, Aaron

From: Wilson, Danielle
Sent: Tuesday, September 01, 2009 5:23 PM
To: Gary, Aaron
Subject: RE: LRB-3274/P1

✓ ARG
 ✓ RAC
 ✓ CMT

Hi Aaron,

Below are some additional changes that Senator Lassa would like made to LRB-3274/P2. I will follow up with a few more changes later this week (hopefully), but thought it may be helpful if I got these to you as soon as possible.

Again, thank you (and Cathleen and Rick) for all of your work.

Danielle Wilson
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 P.O. Box 7882
 Madison, WI 53707-7882
 (608) 266-3123
 danielle.wilson@legis.wisconsin.gov

- cmb ✓ Add language to prevent contractors from writing cost benefit analyses.
- ARG ✓ • Take out all of the fraud penalties language. We will likely address this issue in a separate draft soon.
- RAC • Page 4, Line 7 and all references to "positions" replace with "contract expenditures to include all positions, number of service hours, recurring service rate payments"
- RAC • Page 5, line 10. Strike altogether.
- cmb • Page 7, Line 1-2. Add language that clarifies after the original license/warranty expires, then a cost benefit analysis must be conducted.
- Email - cmb • Page 7, Line 19 and all references to "person", change to use the word "Contractor" to ensure that the company is responsible for returning expenditures in the form of liquidated damages, not an individual person. (If you don't think this is necessary/appropriate, would you please provide me with an explanation of why it isn't? Thanks!)
- cmb • Page 8, Line 17 and 18. Require that evaluations be conducted as a prerequisite to renewal.
- cmb • Page 8, Lines 22-24. Instead of banning contractors who have previous poor evaluations, simply require agencies to include evaluations in their contract awarding process, so that the evaluations hold weight in the decision making process. They thought that the current language wouldn't give contractors a chance to fix whatever issues may have arisen during the contract.
- RAC ✓ • Page 11, line 19. Change the amount of the cut from 1% to 3%.

09/02/2009

-cmh email

- Page 12, Line 23. Further define the word modified to be: "modified to affect the total expenditure on the contract."

From: Gary, Aaron
Sent: Tuesday, September 01, 2009 2:50 PM
To: Wilson, Danielle
Subject: RE: LRB-3274/P1

Hi Danielle,

Rick and Cathlene made the two changes in the second paragraph. Do you want me to send those changes out to you as a "P2" draft, or should I hold onto it until the DOT False Claims stuff can be added?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Wilson, Danielle
Sent: Monday, August 31, 2009 11:51 AM
To: Gary, Aaron
Subject: LRB-3274/P1

Hi Aaron,

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In the meantime though, I thought I would quick send you two other changes that she would like made. First, she would like to remove the language that states that the Department of Commerce may not engage any person who is not a department employee to perform electrical services for the department unless the department finds, based upon a cost-benefit analysis, that those services can be performed more cost-effectively and efficiently by that person than by a department employee. Secondly, on page 4, line 4 she would like to replace "perform an audit" with "the state auditor shall undertake periodic audits." This language is referenced from 13.94(8)(b). Her intent is to give the LAB enough flexibility to conduct the audits as often as possible without requiring audits on every CBA.

Thanks for all of your help. I hope you had a good weekend!

Danielle Wilson
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P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123

09/02/2009

danielle.wilson@legis.wisconsin.gov

Hanaman, Cathlene

From: Wilson, Danielle
Sent: Wednesday, September 09, 2009 9:39 AM
To: Gary, Aaron; Hanaman, Cathlene; Champagne, Rick
Subject: Drafting update-LRB-3274/P1

Please remove all of the language relating to expenditures that exceed 10% of the estimate in the cost benefit analysis (page 7, lines 3-8) and instead create language that expands the time period for the public (and union if there is a difference) to challenge an awarded bid from 5 days to 15 days, based on the fact that the CBA demonstrates that it would now be cost effective and efficient to conduct the work in house. She would also like to require electronic notification of the bid, as it is currently our understanding that such notices are released via mail.

Thank you for your help! Please let me know if you have any questions.

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

*Adm Code
10.15*



State of Wisconsin
2009 - 2010 LEGISLATURE

FROM
3062/1

LRB-3062/1
RAC:bjk:jf

~~JOON~~

2009 BILL

Wanted
by 8/14
if possible

~~ARRA...~~
RAC & CMH & ARG:bjk

SA
x-ref
Inserts

D-Note
3274/P1

-gen-cat

1 AN ACT to create 16.42 (1) (h), 16.46 (10), 16.705 (9) and 101.85 of the statutes;
2 relating to: state contractual services and providing a penalty

Analysis by the Legislative Reference Bureau

This bill ~~contains provisions relating to state contractual services that were vetoed by the governor in 2009 Wisconsin Act 28. Specifically, the bill~~ does all of the following Relating to state contracts

1. Requires executive branch state agencies to submit to the Department of Administration and the Legislative Fiscal Bureau, by September 15 of the even-numbered year, information on the number of contracted positions providing services for the agency that are paid from the agency's base level funding and an identification of the appropriation or appropriations used to fund the contracted positions; the total amount of agency base level funding used to pay for the contracted positions; the amount of funding requested for contracted positions and an identification of the appropriation or appropriations that will be used to fund the contracted positions; and an estimate of the number of additional full-time equivalent state employee positions that the agency would need to perform all of the services provided by contracted positions.
2. Requires the secretary of administration to include in the biennial budget report all of the information specified in Item 1.
3. Provides that if in any fiscal year an executive branch agency is prohibited from hiring employees to fill vacant positions or its employees are required to serve an unpaid leave of absence, the agency may not enter into, renew, or extend any contractual services contracts with private contractors or consultants for the

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remainder of that fiscal year for the performance of services of agency employees who would have performed the services had they been hired or had they not have been required to take an unpaid leave of absence. This provision, however, does not apply to certain contracts of the Office of the State Public Defender, as well as certain contractual services contracts funded with federal economic stimulus funds. The bill further provides that an agency may submit a written request to the Joint Committee on Finance (JCF) to exempt an agency with respect to a specific contractual services contract. If the cochairpersons of JCF do not notify the agency within 14 working days after the date of the agency's submittal that JCF intends to schedule a meeting to review the request, approval of the request is granted. If, within 14 working days after the date of the agency's request submittal, the cochairpersons notify the agency that JCF intends to schedule a meeting to review the request, the request may be granted only as approved by JCF.

4. Provides that the Department of Commerce may not engage any person who is not a department employee to perform electrical services for the department unless the department finds, based upon a cost-benefit analysis, that those services can be performed more cost-effectively and efficiently by that person than by a department employee. "Cost-benefit-analysis" is defined to mean a comprehensive study to identify and compare the total cost, quality, technical expertise, and timeliness of a service performed by department employees and resources with the total cost, quality, technical expertise, and timeliness of the same service obtained by means of a contract.

5. Requires each executive branch agency to review its contractual services contracts for private contractors and consultants for the purpose of reducing spending for contractual services by an amount equal to 1 percent during the 2009-11 fiscal biennium. Before January 1, 2010, each agency shall submit a report to the JCF, specifying either how contractual services spending can be reduced to achieve the 1 percent expenditure reduction goal or why the agency is unable to reduce its contractual services expenditures to achieve the 1 percent expenditure goal. The bill authorizes JCF to take appropriate action to reduce each agency's spending for contractual service during the 2009-11 fiscal biennium by an amount up to 1 percent.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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2-1 →

SECTION 1. 16.42 (1) (h) of the statutes is created to read:

- 1 16.42 (1) (h) 1. The number of contracted positions providing services for the
- 2 agency that are paid from the agency's base level funding and an identification of the
- 3 appropriation or appropriations used to fund the contracted positions.
- 4

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1 2. The total amount of agency base level funding used to pay for the contracted
2 positions.

3 3. The amount of funding requested for contracted positions and an
4 identification of the appropriation or appropriations that will be used to fund the
5 contracted positions.

6 4. An estimate of the number of additional full-time equivalent state employee
7 positions that the agency would need to perform all of the services provided by
8 contracted positions.

9 **SECTION 2.** 16.46 (10) of the statutes is created to read:

10 16.46 (10) (a) A statement of the number of contracted positions providing
11 services for each state agency that are paid from the agency's base level funding and
12 an identification of the appropriation or appropriations used to fund the contracted
13 positions.

14 (b) A statement of the total amount of each state agency's base level funding
15 used to pay for the contracted positions.

16 (c) A statement of the amount of funding requested by state agencies for
17 contracted positions and an identification of the appropriation or appropriations that
18 will be used to fund the contracted positions.

19 (d) An estimate of the number of additional full-time equivalent state
20 employee positions that each state agency would need to perform all of the services
21 provided by contracted positions.

22 **SECTION 3.** 16.705 (9) of the statutes is created to read:

23 16.705 (9) (a) In this subsection, "federal economic stimulus funds" means
24 federal moneys received by the state, pursuant to federal legislation enacted during
25 the 111th Congress for the purpose of reviving the economy of the United States.

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3-22

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1 (b) Except as provided in pars. (c) and (d), if in any fiscal year an agency in the
2 executive branch is prohibited from hiring employees to fill vacant positions or its
3 employees are required to serve an unpaid leave of absence, the agency may not enter
4 into, renew, or extend any contractual services contracts with private contractors or
5 consultants for the remainder of that fiscal year for the performance of services of
6 agency employees who would have performed the services had they been hired or had
7 they not have been required to take an unpaid leave of absence.

8 (c) Paragraph (b) shall not apply to contractual services contracts that are
9 funded with federal economic stimulus funds and the secretary determines that any
10 deadlines imposed by the federal government on the expenditure of the federal
11 economic stimulus funds cannot be met without an agency's entering into, renewing,
12 or extending a contractual services contract or a cost-benefit analysis is conducted
13 that demonstrates that a contractual services contract would be more cost effective
14 and efficient than having state employees perform the services.

15 (cm) Paragraph (b) shall not apply to contracts entered into, renewed, or
16 extended under s. 977.08.

17 (d) An agency in the executive branch may submit a written request to the joint
18 committee on finance to have par. (b) not apply to the agency with respect to a specific
19 contractual services contract. If the cochairpersons of the committee do not notify
20 the agency within 14 working days after the date of the agency's submittal that the
21 committee intends to schedule a meeting to review the request, approval of the
22 request is granted. If, within 14 working days after the date of the agency's request
23 submittal, the cochairpersons of the committee notify the agency that the committee
24 intends to schedule a meeting to review the request, the request may be granted only
25 as approved by the committee.

Present AG
4-25

BILL

1 **SECTION 4.** 101.85 of the statutes is created to read:

2 **101.85 Contracting for services. (1)** In this section, “cost-benefit analysis”
3 means a comprehensive study to identify and compare the total cost, quality,
4 technical expertise, and timeliness of a service performed by department employees
5 and resources with the total cost, quality, technical expertise, and timeliness of the
6 same service obtained by means of a contract.

7 **(2)** The department may not engage any person who is not an employee of the
8 department to perform services for the department under this subchapter unless the
9 department finds, based upon a cost-benefit analysis, that those services can be
10 performed more cost-effectively and efficiently by that person than by an employee
11 of the department.

12 **SECTION 5. Nonstatutory provisions.**

13 **(1) STATE AGENCY CONTRACTUAL SERVICES SPENDING.**

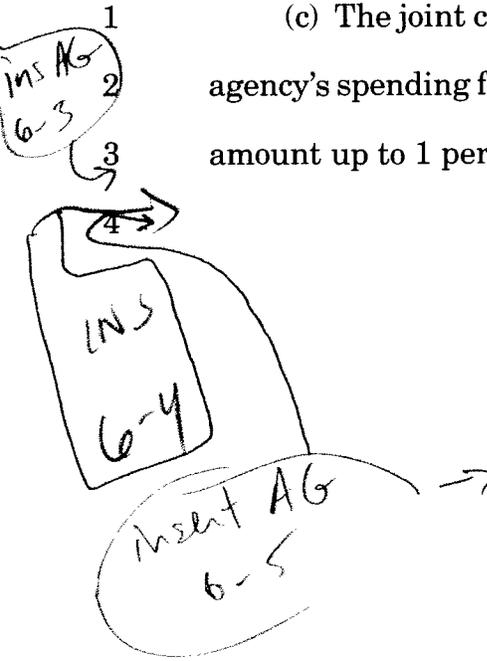
14 **(a)** In this subsection, “agency” means an office, department, agency,
15 institution of higher education, association, society, or other body in the executive
16 branch of state government created or authorized to be created by the constitution
17 or any law, which is entitled to expend moneys appropriated by law.

18 **(b)** Each agency shall review its contractual services contracts for private
19 contractors and consultants for the purpose of reducing spending for contractual
20 services by an amount equal to 1 percent during the 2009-11 fiscal biennium. Before
21 January 1, 2010, each agency shall submit a report to the joint committee on finance,
22 specifying either how contractual services spending can be reduced to achieve the 1
23 percent expenditure reduction goal or why the agency is unable to reduce its
24 contractual services expenditures to achieve the 1 percent expenditure goal.

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1 (c) The joint committee on finance may take appropriate action to reduce each
2 agency's spending for contractual service during the 2009-11 fiscal biennium by an
3 amount up to 1 percent.

(END)



Done

LPS - Please check spelling.

1 Insert A

Currently, the Department of Administration (DOA) or any state agency to which DOA delegates purchasing authority may contract for services if the services may be performed more efficiently or economically by contract than if state employees performed them. This bill allows contracting for services whenever the services may be performed more efficiently and economically by contract than if state employees performed them.

Under current law, if a state agency enters into or renews a contract for services that involves an estimated expenditure of more than \$25,000, the agency must conduct either a uniform cost-benefit analysis, for a new contract, or a continued appropriateness review, for a contract renewal. This bill requires a cost-benefit analysis or continued appropriateness review to consider all relevant costs including salaries and benefits, liability insurance, overhead, facility costs, and taxes. Under this bill, no cost-benefit analysis may be shown to any bidder until all bids have been reviewed, and the Legislative Audit Committee must audit contracts entered into if a cost-benefit analysis or continued appropriateness review was required. In addition, this bill requires a second cost-benefit analysis or continued appropriateness review if a proposed contract indicates that expenditures will exceed by more than 10 percent the expenditures estimated in the first cost-benefit analysis or review and requires that, if the expenditures of the contractor exceed the bid by more than 10 percent, the state agency must get approval from the Joint Finance Committee before paying the additional amount.

The bill requires the Division of Legal Services in DOA to develop standard performance measures to evaluate services performed by contract for a state agency and to determine what actions taken by the contractor would result in the state agency recovering the expenditures it paid to the contractor.

Under current law, if a state agency for which services are performed concludes that the services were unsatisfactory, the agency must file an evaluation with DOA, and DOA must ensure that future contracts are not awarded to contractors whose past performance was unsatisfactory. This bill adds that a state agency must file an evaluation with DOA if the contractual services are unsatisfactory according to the standard performance measures developed by the Division of Legal Services or if the state agency recovers expenditures from the contractor under the guidelines developed by the Division of Legal Services. DOA must ensure that future contracts are not awarded to those contractors.

2

3 Insert 2-1

4 SECTION 1. 13.94 (1) (cm) of the statutes is created to read:

1 13.94 (1) (cm) If a contract is entered into under s. 16.705 after a cost-benefit
2 analysis or continued appropriateness review was required under s. 16.705 (2),
3 perform an audit on the analysis or review, whichever is appropriate, and the
4 subsequent contract.

5

6 Insert 3-22

7 **SECTION 2.** 16.705 (1) of the statutes is amended to read:

8 16.705 (1) The department or its agents may contract for services which can
9 be performed more economically ~~or~~ and efficiently by such contract. The department
10 shall, by rule, prescribe uniform procedures for determining whether services are
11 appropriate for contracting under this subsection. No contract under this section
12 may be automatically renewed.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431.

13 **SECTION 3.** 16.705 (2) of the statutes is renumbered 16.705 (2) (a) (intro.) and
14 amended to read:

15 16.705 (2) (a) (intro.) The department shall promulgate rules for the
16 procurement of contractual services by the department and its designated agents,
17 including but not limited to rules the following:

18 1. Rules prescribing approval and monitoring processes for contractual service
19 contracts.

20 2. Except as provided in par. (b), a requirement for agencies to conduct a
21 uniform cost-benefit analysis of each proposed contractual service procurement
22 involving an estimated expenditure of more than \$25,000 in accordance with
23 standards prescribed in the rules, and, except as provided in par. (b), a requirement
24 for agencies to review periodically, and before any renewal, the continued

1 appropriateness of contracting under each contractual services agreement involving
2 an estimated expenditure of more than \$25,000. The rules shall require the
3 cost-benefit analysis or continued appropriateness review to include all relevant
4 costs including the median salary and fringe benefit cost of the current employees
5 providing the services, materials, inspections, unemployment insurance,
6 transitional costs, liability insurance, overhead, facility costs, taxes, and other
7 incidental costs.

8 (e) Each officer requesting approval to engage any person to perform
9 contractual services shall submit to the department written justification for such
10 contracting which shall include a description of the contractual services to be
11 procured, justification of need, justification for not contracting with other agencies,
12 a specific description of the scope of contractual services to be performed, and
13 justification for the procurement process if a process other than competitive bidding
14 is to be used. The department may not approve any contract for contractual services
15 unless it is satisfied that the justification for contracting conforms to the
16 requirements of this section and ss. 16.71 to 16.77.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33
ss. 201, 9160; 2005 a. 89, 142, 431.

17 **SECTION 4.** 16.705 (2) (b), (c) and (d) of the statutes are created to read:

18 16.705 (2) (b) A cost-benefit analysis or continued appropriateness review is
19 not required for services that federal or state law requires to be performed by
20 contract services that are incidental to the purchase of a commodity or services that
21 must be provided per a contract, license, or warranty by the original equipment
22 manufacturer or publisher.

23 (c) If a proposed contract indicates expenditures that are more than 10 percent
24 more than the expenditures used in the cost-benefit analysis or in the continued

1 appropriateness review, the agency that conducted the original cost-benefit analysis
2 or continued appropriateness review shall conduct another cost-benefit analysis or
3 review, whichever is appropriate, that complies with any requirements under this
4 subsection for a cost-benefit analysis or review.

5 (d) A cost-benefit analysis may not be shown to a bidder until after all of the
6 bids have been reviewed.

7 **SECTION 5.** 16.705 (5g), (5m) and (5r) of the statutes is created to read:

8 16.705 (5g) All contracts for contractual services must provide notice of the
9 rules promulgated by the division of legal services under sub. (5m) (a) and of the
10 requirements under sub. (5r).

11 (5m) The division of legal services shall promulgate rules on all of the following:

12 (a) Actions by the person performing the contractual services that would result
13 in the agency for which contractual services are performed recovering any
14 expenditures for those contractual services that the agency paid to the person
15 performing the contractual services.

16 (b) Standard performance measures to evaluate persons performing
17 contractual services.

18 (5r) (a) If the expenditures of the person performing the contractual services
19 exceed its ^{original} bid by 10 percent or more, approval from the ~~Joint~~ ~~Committee on~~ ~~Finance~~
20 is required before the increased amount may be paid.

21 (b) No person performing contractual services under this section may provide
22 any salary increase if the salary increase would result in greater expenditures for the
23 agency for which the contractual services are performed than the amounts specified
24 in the original bid.

1 **SECTION 6.** 16.705 (6) of the statutes is renumbered 16.705 (6) (b) and amended
2 to read:

3 16.705 (6) (b) If the agency for which contractual services are performed under
4 a contractual services agreement concludes under par. (a) that the standard
5 performance measures indicate that the performance was unsatisfactory, recovers
6 expenditures because the contractor's actions were listed in the rules developed
7 under sub. (5m) (a), or concludes that the performance was unsatisfactory based on
8 factors the agency considers, the agency shall file with the department an evaluation
9 of stating that the contractor's performance was unsatisfactory within 60 days after
10 the fulfillment of the agreement. The evaluation shall be in such form as the
11 secretary may require.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431.

12 **SECTION 7.** 16.705 (6) (a) of the statutes is created to read:

13 16.705 (6) (a) An agency for which contractual services are performed under
14 a contractual services agreement shall evaluate the contractual services using the
15 standard performance measures created under sub. (5m) (b).

16 **SECTION 8.** 16.705 (7) of the statutes is amended to read:

17 16.705 (7) The department shall review evaluations submitted under sub. (6)
18 (b) and promulgate rules prescribing procedures to assure that future contracts for
19 contractual services are not awarded to contractors whose past performance is found
20 to be unsatisfactory, to the extent feasible.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431.

21 **SECTION 9.** 16.705 (8) (a) of the statutes is amended to read:

1 16.705 (8) (a) A summary of the cost-benefit analyses completed by agencies
2 in compliance with rules promulgated by the department under sub. (2) (a).

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431.

3

4 Insert 6-4

5 **SECTION 10. Initial applicability.**

6 (1) The treatment of section 13.94 (1) (cm) of the statutes first applies to a cost
7 benefit analysis or continued appropriateness review commenced on the effective
8 date of this subsection.

9 (2) The treatment of section 16.705 (1) (as it relates to the type of services that
10 can be done by contract), (5g), (5m), and (5r) of the statutes, the renumbering and
11 amendment of section 16.705 (2) and (6) of the statutes, and the creation of section
12 16.705 (2) (b), (c), and (d) and (6) (a) of the statutes first apply to solicitations for
13 contractual services issued on the effective date of this subsection.

14 (3) The treatment of section 16.705 (1) (as it relates to renewal of contracts) of
15 the statutes first applies to contracts entered into, renewed, modified, or extended,
16 whichever occurs first, on the effective date of this subsection.

1 **INS ANAL AG:**

Under current law, if a contractor of the state is asked to swear under oath to the truth of a claim for payment and the contractor makes a false statement which the contractor does not believe to be true, the contractor may be prosecuted for false swearing. Depending on the circumstances, the penalty for false swearing may be a Class H felony, punishable by a fine not exceeding \$10,000 or imprisonment not exceeding six years or both, or a Class A misdemeanor, punishable by a fine not exceeding \$10,000 or imprisonment not exceeding nine months or both.

This bill provides that any person who knowingly presents or causes to be presented to the Department of Transportation (DOT) a false claim for payment under any contract or order in connection with a highway improvement project, including knowingly making any false representation in connection with a claim for payment that materials or workmanship meet DOT's specifications, is subject to the higher of: 1) a fine of not more than \$10,000 or imprisonment for not more than one year in the county jail or both, or 2) if the violation is also an offense under federal law, the federal penalty applicable to the federal offense.

The bill also requires DOT, not a contractor, to conduct all tests of concrete thickness on its highway improvement projects. Under the bill, DOT must also submit a report to the Joint Committee on Finance containing recommendations on actions that DOT and local governments can take to improve the efficiency, cost-effectiveness, and timeliness of local road construction projects and proposed legislative changes to implement these recommendations.

JCF

2

3 **INS AG 4-25:**

4 **SECTION 1.** 84.06 (12) and (13) of the statutes are created to read:

5 84.06 (12) TESTS OF CONCRETE THICKNESS. Notwithstanding any other provision
6 of this section and s. 84.01 (13), the department shall conduct all tests of concrete
7 thickness on highway improvements within its jurisdiction.

8 (13) FALSE CLAIMS. (a) In this subsection, "knowingly" means, with respect to
9 information, having actual knowledge of the information, acting in deliberate
10 ignorance of the truth or falsity of the information, or acting in reckless disregard of
11 the truth or falsity of the information. ^Δ "Knowingly" does not mean specifically
12 intending to defraud.

1 (b) Any person who knowingly presents or causes to be presented to the
2 department a false claim for payment under any contract or order in connection with
3 a highway improvement, including knowingly making any false representation in
4 connection with a claim for payment that materials or workmanship meet the
5 department's specifications, shall be subject to the higher of the following penalties:

6 1. A fine of not more than \$10,000 or imprisonment for not more than one year
7 in the county jail or both.

8 2. If the violation under this subsection is also an offense under federal law, the
9 federal penalty applicable to the federal offense.

10
11 **INS AG 6-3:**

12 (2) REPORT ON LOCAL ROAD PROJECTS. No later than the first day of the 7th month
13 beginning after the effective date of this subsection, the department of
14 transportation shall submit a report to the joint committee on finance that contains
15 all of the following:

A. R.

16 (a) Recommendations on actions that the department and local governments
17 can take to improve the efficiency, cost-effectiveness, and timeliness of local road
18 construction projects.

19 (b) Any proposed legislative changes that the legislature can consider that may
20 help to implement the recommendations under paragraph (a).

A. R.

21 **INS AG 6-5:**

22 (4) The treatment of section 84.06 (1⁴) of the statutes first applies to false
23 claims that are presented or caused to be presented on the effective date of this
24 subsection.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

Date

3274
LRB-~~111~~P1dn

ARG:.....

Lbjk

ATTN: Danielle Wilson

I had difficulty drafting the provision relating to aligning state and federal penalties for contractors who cheat on DOT contracts. Current law does not include a specific violation applicable to contractors who cheat on DOT contracts, so I created s. 84.06 (1~~3~~) in the attached draft. While this new violation is similar to "false swearing" under current law, see s. 946.32, I believe the new violation is broader in scope and easier to prove. I also am not well-versed in the various violations and penalties that might apply to a cheating contractor under federal law. I recommend that you consult DOT on these issues. Finally, to the extent that this bill delegates the penalty for a violation to federal lawmakers, the bill might be seen as an invalid delegation of federal authority. If you have any questions or want any changes made, please let me know.

Aaron R. Gary
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3274/P1dn
ARG:bjk.md

August 13, 2009

ATTN: Danielle Wilson

I had difficulty drafting the provision relating to aligning state and federal penalties for contractors who cheat on DOT contracts. Current law does not include a specific violation applicable to contractors who cheat on DOT contracts, so I created s. 84.06 (14) in the attached draft. While this new violation is similar to "false swearing" under current law, see s. 946.32, I believe the new violation is broader in scope and easier to prove. I also am not well-versed in the various violations and penalties that might apply to a cheating contractor under federal law. I recommend that you consult DOT on these issues. Finally, to the extent that this bill delegates the penalty for a violation to federal lawmakers, the bill might be seen as an invalid delegation of federal authority. If you have any questions or want any changes made, please let me know.

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